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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:)
)
Reform of the Interstate Access Charge Rules) RM-_____

PETITION FOR RULEMAKING

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SUMMARY

USTA petitions the Commission to issue a Notice of Proposed Rulemaking to amend its rules in order to reform the existing interstate access charge rules. New access rules are necessary to reflect the significant changes which have occurred in the access marketplace since the rules were enacted in 1983. Rapid technological changes, evolving customer needs, increased access marketplace competition and pro-competitive Commission policies necessitate reform of the current access rules. Others within the telecommunications community agree that access reform is needed. In fact, the Commission has already developed an extensive record on access issues.

USTA's Petition identifies seven objectives to better serve the public interest which guided the development of USTA's proposed rules changes. Those seven objectives are to: promote universal service, facilitate the introduction of new services and technologies, encourage efficient use of the network, support balanced competition in access markets, encourage development of the telecommunications infrastructure, prevent unreasonable discrimination and minimize regulatory burdens. USTA's access reform proposals will result in economically efficient pricing and correct market signals while maintaining universal service support mechanisms and eliminating the regulatory constraints which inhibit the introduction of new services.

USTA's proposal would facilitate the introduction of new services by eliminating the current burdensome requirement to obtain a waiver or a rule change for each new

service or restructured service which an exchange carrier seeks to offer. Under USTA's proposal, it would no longer be necessary to classify each proposed new service under one of the existing Part 69 elements.

USTA's proposal would tailor the degree of regulation to the level of competition present within a particular exchange carrier's market area by creating a three tier market structure consisting of Initial Market Areas, Transitional Market Areas and Competitive Market Areas.

USTA's proposal revises the current access category and price cap basket design to reflect today's services and to enable carriers to meet evolving customer needs. It also describes filing requirements, including notice intervals and cost and demand support, relevant for each type of filing and market area. USTA proposes to eliminate both the upper bound sharing and automatic lower bound adjustment mechanisms for price cap carriers.

USTA's proposal is consistent with the Commission's recent order reducing regulatory burdens and introducing incentive regulation for small and mid-sized exchange carriers. It also incorporate and builds upon recent Commission initiatives, such as zone pricing.

At the core of USTA's proposal is the concept that market forces can be harnessed

to better safeguard the public interest, relieving regulators of the burden of constant reevaluation of artificial and arbitrary pricing boundaries.

Absent a comprehensive rulemaking, effective and efficient change will not occur. A Notice of Inquiry is an unnecessary procedural step which will further delay access reform. A piece-meal approach is not only ineffective and inefficient, it does not result in a coordinated solution. USTA urges the Commission to promptly initiate the rulemaking proceeding requested herein.

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PETITION FOR RULEMAKING

The United States Telephone Association (USTA) hereby petitions the Federal Communications Commission (Commission) to issue a Notice of Proposed Rulemaking (NPRM) to amend its rules, including Parts 43, 61, 64, 65, and 69¹ as described herein, in order to reform the existing interstate access charge rules so that the objectives of the Communications Act of 1934, (the "Act"), may be realized in light of the significant changes which have occurred within the access marketplace. USTA is the principal trade association of the exchange carrier industry. Its members provide over 98 percent of the exchange carrier-provided access lines in the U.S.

I. INTRODUCTION

The Commission has a continuing obligation to review its policies and rules to determine whether they continue to further the public interest by promoting the objectives they were originally designed to achieve.² Either experience or changed circumstances may trigger such a review. As will be discussed below, the changes which have occurred in the access marketplace since 1983 represent a legitimate trigger.

¹USTA does not request that the Commission undertake separations reform as a part of this proceeding. If required, separations reform would be better addressed in a separate proceeding following the conclusion of the NPRM proposed in this Petition.

²Geller v. FCC, 610 F.2d 973 (1979).

The framework used by the Commission to regulate interstate access services has outlived its usefulness. A new framework, responsive to today's access marketplace, is urgently needed if the Commission is to achieve its policy goals in the current environment of changing technology, increasing competition and pro-competitive regulation. The amendments to the Commission's rules and regulations proposed herein provide such a framework.

Others within the telecommunications community have acknowledged the need for access reform. Not surprisingly, concurrent efforts to suggest reform proposals are taking place elsewhere within the industry. The National Association of Regulatory Utility Commissioners' (NARUC's) Access Issues Work Group (AIWG) undertook a study project involving a review of the interstate access rules. The AIWG solicited comment from a diverse group of interested parties, including exchange carriers, interexchange carriers, resellers, competitive access providers and consumer organizations. According to the report, a broad consensus exists that changes to the existing access rules are necessary. The AIWG report was recently filed by NARUC with a Petition for Notice of Inquiry (NOI) requesting that the Commission seek comment on the issues raised by AIWG.³

A staff task force of the Commission's Common Carrier Bureau has issued a position paper on interstate access reform. In the paper, the task force concluded that "[s]ignificant developments in access service and long distance service competition, the introduction of new technologies and services, and the significant changes in regulatory treatment for many of the larger LECs have eroded the fundamental basis for many of the access charge rules. Access competition, as we know it today, did not exist in the early

³The AIWG report does not represent a consensus of the views expressed by the commenting parties. NARUC has not established a position on the AIWG report. NARUC does believe, however, that a comprehensive review of the existing interstate access services framework must be conducted. While USTA agrees with NARUC that access reform is needed, USTA urges the Commission to avoid further delay by addressing that need in a NPRM, not a NOI. See, Part VI below and USTA's comments filed September 2, 1993 in National Association of Regulatory Utility Commissioners' Petition for Notice of Inquiry Addressing Access Issues, DA 93-847.

1980s. As a result, the rules were not written to accommodate the emergence of the competition we see today. New services and technologies no longer fit neatly into the categories of facilities established by Part 69. Furthermore, new forms of regulation have significantly changed carrier incentives and have also provided regulatory checks on a carrier's ability to act anticompetitively."⁴

An extensive record on many access-related issues has already been developed by the Commission, albeit in a piece-meal fashion. The proceedings involving price cap regulation, expanded interconnection, local transport, alternative regulation for small and mid-sized carriers, requirements for non-dominant carriers, operator services, Open Network Architecture, Line Information Data Base, 800 Data Base, BNA and the new marketplace structures requested by Ameritech and Rochester have addressed access reform.⁵ Parties are on record in those proceedings discussing the need for access reform. USTA's Petition responds to the interests expressed in the telecommunications community by requesting a rulemaking addressing interstate access issues.

Part II of the Petition describes the changed conditions which make reform of the existing interstate access rules imperative. USTA explains that while existing and anticipated proceedings have begun to address limited access issues, rapid technological change, evolving customer needs and increased market competitiveness require the type of change which can be realized only through a more comprehensive access reform proposal.

⁴"Federal Perspectives on Access Charge Reform: A Staff Analysis", Access Reform Task Force, Common Carrier Bureau, Federal Communications Commission, April 30, 1993, p. 3. [Staff Analysis].

⁵The Ameritech and Rochester proposals seek specific waivers necessary to implement unique trial plans that fundamentally restructure the local services provided by those companies and integrate alternate exchange providers into their networks. This Petition does not seek to address waivers that may be necessary to address special circumstances of some exchange carriers. Nothing in this Petition need delay action on the waivers sought by both Ameritech and Rochester.

USTA's access reform proposal is targeted to accommodate the dynamics of markets and technology instead of furthering the micro-management of markets and market providers, to maintain the basic goals of the exchange carrier industry Unity I-A Agreement in an increasingly competitive marketplace, and to provide equitable treatment for all access competitors. Part III discusses the objectives which guided the development of USTA's proposals and which will serve the public interest. Those seven objectives are to: promote universal service, facilitate the introduction of new services and technologies, encourage efficient use of the network, support balanced competition in access markets, encourage development of the telecommunications infrastructure, prevent unreasonable discrimination and minimize regulatory burdens. Indeed, the proposals contained within this Petition will result in economically efficient pricing and correct market signals while maintaining universal service support mechanisms and eliminating the regulatory constraints which inhibit the introduction of new services. The proposal accommodates change—changing technology, changing customer needs and changing competitive conditions. It seeks to deliver greater public interest benefits than the current interstate access charge rules.

Part IV details the specific reforms proposed by USTA. These reforms are based on the Interstate Access Reform Proposal which USTA placed on the record in both CC Docket Nos. 91-141 and 91-213.⁶ While the Petition closely follows the earlier proposal, some details have been refined based on actions taken in those dockets. The proposals focus on providing structural flexibility, pricing flexibility and support for public policy objectives in the face of full competition for both price cap and non-price cap carriers.

More specifically, the Petition proposes an access structure which would facilitate the introduction of new services, since it would eliminate the current burdensome

⁶Reply Comments of USTA filed February 19, 1993 in Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Phase I and Reply Comments of USTA filed March 19, 1993 in Transport Rate Structure and Pricing, CC Docket No. 91-213.

requirement to obtain a waiver or a rule change for each new service or restructured service which an exchange carrier seeks to offer. Under USTA's proposal, it would no longer be necessary to classify each proposed new service under one of the existing Part 69 elements. Such a classification is not always a natural or obvious choice.

USTA has supported the general conclusion expressed by the Commission in its expanded interconnection proceeding that the degree of regulation should be tailored to market conditions, including allowing exchange carrier prices to reflect traffic-density-related cost differences among carrier-specific market areas.⁷ Accordingly, the Petition recommends a three tier market structure consisting of Initial Market Areas (IMAs), Transitional Market Areas (TMAs) and Competitive Market Areas (CMAs). Rules governing pricing would correspond to the degree of competition present within a particular carrier's market area. Such rules would better enable an exchange carrier to respond to individual competitive proposals in a flexible and timely manner. No "metric" tests should ever be employed to prevent an exchange carrier's entry into a particular business or delay its ability to provide any service to its customers.

The Petition proposes revisions to the current price cap basket design which will enable all affected carriers to better meet evolving customer needs. It also outlines the filing requirements, including notice intervals and cost and demand support, relevant for each type of filing and market area. USTA proposes to eliminate both the upper bound sharing and automatic lower bound adjustment mechanisms for price cap exchange carriers. The Petition is consistent with the Commission's recent order reducing regulatory burdens and introducing incentive regulation for small and mid-sized carriers. It also incorporates and builds upon recent Commission initiatives such as zone pricing.

⁷Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Report and Order, 7 FCC Rcd 7369 (1992) at ¶¶ 174-179. [Expanded Interconnection Order].

The Petition is broad enough in scope to include comprehensive changes to the current access charge rules and is specific enough to focus on those aspects of the rules which are most urgently in need of reform. While USTA is proposing only minimal changes to existing, explicit universal service support mechanisms in the Petition, it is currently developing solutions to the broader spectrum of public policy issues related to universal service support. These issues could be addressed concurrently. However, USTA believes that all service providers should be required to contribute to the recovery of universal service costs. The Petition does not propose any changes to the separations process. USTA also believes that reform of the current depreciation process is necessary, although specific proposals are not included herein. In addition, reporting requirements for exchange carriers must be reduced to better reflect the competitive access environment. The Petition strikes a reasonable balance: it is sufficiently comprehensive to offer meaningful access reform, yet specific enough to be considered and adopted within a reasonable timeframe.

Part V of the Petition demonstrates that the rules proposed herein are in the public interest. At the core of these recommendations is the concept that market forces can be harnessed to better safeguard the public interest, relieving regulators of the burden of constant reevaluation of artificial and arbitrary pricing boundaries. Implementing these proposals on a market area basis will assure that the public interest will be fully served in all access markets.

Part VI explains that absent a comprehensive rulemaking, effective and efficient change will not occur. An NOI, as suggested by NARUC, cannot result in timely action that will remedy those deficiencies. A piece-meal approach is not only ineffective and inefficient, it does not result in a coordinated solution. Changes resulting from individual, isolated Commission proceedings are not likely to address the critical issues facing the telecommunications community. In fact, resolution of one issue, without a coordinated effort, may serve only to exacerbate another issue. To date, the core issues have not been confronted.

Part VII summarizes the specific amendments to the Commission's rules found in Attachment 7. The amendments are consistent with the concepts outlined herein and construct a framework which will enable the Commission to satisfy its statutory obligations.

According to its rules, if the Commission determines that a "petition discloses sufficient reasons in support of the action requested" then "an appropriate notice of proposed rulemaking will be issued."⁸ There is broad recognition that sufficient reasons now exist to enact reform of the current access rules. Indeed, the reasons to initiate the proposed rulemaking are compelling.

II. CURRENT CONDITIONS REQUIRE REFORM OF THE EXISTING INTERSTATE ACCESS RULES

The current interstate access structure, rates and rules have evolved little from the Commission's decisions of 1983.⁹ If the access environment had remained static, the Commission's original access charge plan and its resulting policies and rules might have continued to satisfy its objectives. However, rapidly evolving technologies, new market entrants and new procompetitive Commission policies have dramatically changed the access environment. The 1983 framework, characterized by rigid rate structure definitions and pricing restrictions for switched access which bear little relation to underlying demand or economic cost, is inconsistent with the competition and

⁸47 C.F.R. 1.407

⁹MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, Third Report and Order, 93 FCC 2d 241 (1983), modified on recon., 97 FCC 2d 682 (1983), modified on further recon., 97 FCC 2d 834 (1984), affirmed in principal part and remanded in part, *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), cert. denied, 469 U.S. 1227 (1985), modified on further recon., 102 FCC 2d 849 (1985). While some work had previously been done to develop access arrangements through the ENFIA agreements, the rules as finally adopted were the Commission's response to competition in the long distance market, and had to be implemented to replace the division of revenue and settlements process after the AT&T divestiture.

technology which exist in 1993 and with the evolving conditions which will exist in 1994 and beyond. Within the current rules, the Commission cannot encourage competition in the access market and expect to continue to meet its original objective to promote universal service. Ultimately, the public interest benefits of the original plan have diminished and customers have suffered accordingly.¹⁰

In 1983, competition in the interstate access market was limited. The existing access charge plan was not explicitly designed to address the impacts of competition on the access marketplace. Technological innovation has made access competition more feasible and more economic. For example, fiber technology has enabled a greater number of telecommunications providers to offer high quality, two-way transmission services and has reduced the potential costs of those services. Competitive access providers have utilized fiber optics and microwave systems to provide service to business users in urban areas across the country.¹¹ Technologies utilizing radio frequency, such as cellular and personal communications services, will also compete against the technologies and services of exchange carriers. In addition, the Commission has eliminated regulatory barriers which has resulted in increased competitive alternatives.

¹⁰See, J. Haring and H. Shooshan, III, *Free to Compete: Meeting Customer Needs in the Provision of the Public Network* (March 1993). ("Customers believe that, to exploit the existence of competitive alternatives to maximum advantage, they need to be free to play competing vendors and alternative solutions off against one another to the fullest extent possible. Customers emphasize the importance of being able to surround themselves with strategic vendors who can help them meet their needs. Customers believe that [Southwestern Bell] should be allowed to compete and, in particular, to price more flexibly in markets where it faces competition." at p. iii). [Haring and Shooshan].

¹¹See, *Transport Rate Structure and Pricing*, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, released October 16, 1992, at ¶ 105; USTA reply comments filed March 19, 1993 in that docket at pp. 26-27; and Staff Analysis at pp. 17-18.

For example, the Commission has approved expanded interconnection for the provision of both switched and special access services in CC Docket No. 91-141. Exchange carrier competitors are not subject to the burdensome requirements of the current access rate structure and the Commission has not provided exchange carriers with the ability to respond adequately to increased competition. In other words, the access market is up for grabs—certainly the small proportion of customers who generate a significant majority of interstate access traffic—yet the opportunities to compete in that market are not balanced.

The 1983-based access rules were not designed to promote new technologies and services. The Commission's prescribed rate structure is based on 1983 technology. As a result, the development and deployment of new technologies and services is being hindered.¹²

Under the existing rules, a carrier seeking to implement a service arrangement with a new rate element that is not contemplated by the rules must choose either to seek a rule change or a waiver. Both procedures involve lengthy Commission review prior to decision.¹³ Exchange carriers cannot, with any degree of certainty, predict the timing

¹²A lengthy series of waiver proceedings illustrates the continuing difficulties in providing new access services. Attachment 1 lists many services which were delayed or rejected as a result of the Commission's rules. The future promises a host of new services that are not likely to fit neatly into existing regulatory categories. Attachment 2 explains future conflicts which are likely to develop among forthcoming technologies and services and the existing structure.

¹³The waiver process is necessary to obtain permission to introduce new rate elements and technical publications. If a waiver is granted, there is a subsequent tariff review process which adds additional delay.

or results of these processes.¹⁴ The Commission staff recognized this problem, noting that the need to obtain waivers "has a chilling effect on the development and introduction of new services and technologies."¹⁵ In a competitive environment, any delay in introducing a new or customer-specific service is unacceptable for customers. In fact, the expectation of delays caused by the rigidity of the existing access framework discourages the introduction of new exchange carrier access services and forces customers to seek such services from other sources. Ultimately, these rules serve only to prevent exchange carriers from responding to customer needs, thereby causing an unacceptable consumer detriment, and they confer an unreasonable, and unearned, advantage upon the exchange carrier's competitors.

Further, the current rules are contrary to the provisions of the Act. Section 157(a) creates a presumption in favor of new services and places the burden of proof on any party opposing a new service to show that introduction of the new service would not be in the public interest. The current rules force the opposite result: exchange carriers proposing a new service resulting in a new rate element must overcome a significant burden of proof to justify a rule change or waiver. The statutory presumption should be incorporated into the Commission's rules.

¹⁴The Commission's rules do not require that waiver requests be acted upon within a specific timeframe. Therefore, a waiver request may either be approved, denied or simply left unresolved unless judicial intervention is sought and granted.

¹⁵Staff Analysis at p. 41.

The existing access charge plan cannot accommodate complex and packaged services made possible by newly evolving technologies and demanded by more sophisticated customers. Customized service packages and hybrid, integrated services overlap codified access elements. The Commission staff observed that "[t]hese new technologies challenge the static nature of the Part 69 rules and highlight the need for reform to accommodate and encourage innovation."¹⁶

If regulatory policies continue to prevent exchange carriers from responding to competition, customers will not realize the full benefits of competition. Since exchange carriers are currently the only service providers subject to rules which prevent them from offering customized and/or packaged services, they are not be able to compete effectively.¹⁷ Current regulations permit only minimal price flexibility for exchange carriers. Prior to the Commission's recent decision in CC Docket No. 91-141, rates were required to be averaged at the study area level. Now, exchange carriers have the option of establishing zones once expanded interconnection is available in the study area.¹⁸ If an exchange carrier opts to establish zones, the wire centers¹⁹ in each study area would be assigned to the applicable zone based on traffic density characteristics. Previous

¹⁶Staff Analysis at p. 20.

¹⁷"We see regulation as introducing risk, and we have to concern ourselves with minimizing that risk. I'd like to negotiate with Southwestern Bell on a contract basis or like I can with AT&T on Tariff 12. I resent the fact that regulation prevents me from dealing with a willing supplier on terms we can agree on," as quoted in Haring and Shooshan at pp. ii-iii.

¹⁸The Commission, however, has initially approved zone density pricing plans for only a limited number of services. Further, the range of pricing flexibility for each zone is tightly constrained and there is no recognition that differences among zones exist.

¹⁹Usually, a wire center denotes a building in which one or more central offices, used for the provision of telephone exchange services, are located.

pricing mechanisms which allowed greater flexibility, such as Individual Case Basis (ICB) pricing for DS3 services, are now limited to unique circumstances.²⁰ Unlike alternative suppliers, exchange carriers generally have no effective mechanism for responding to customer requests for competitive proposals for individual services or service packages tailored to their needs. While there are a few services that continue to be excluded from the price cap plan (e.g., packet switched services, ICBs, and special construction), none of the exchange carrier communication offerings are exempted from meeting all tariff filing and cost support requirements.

USTA believes that the proposals contained within its Petition represent a workable, realistic approach to establishing a dynamic access charge plan capable of addressing the rapidly changing environment of today and of the future by encouraging the introduction of new services and creating pricing rules which permit exchange carriers to compete with other providers to meet customer needs.

III. IN ORDER TO CONTINUE TO MEET ITS STATUTORY OBLIGATION TO PROTECT THE PUBLIC INTEREST, THE COMMISSION MUST REDEFINE ITS OBJECTIVES

The Commission is empowered to establish rules and regulations in order to protect the public interest.²¹ The Commission has continually established objectives to achieve this goal. When it developed the access charge plan in 1983, the Commission

²⁰Local Exchange Carriers' Individual Case Basis DS3 Service Offerings, CC Docket No. 88-136, FCC 89-339, Memorandum Opinion and Order, 4 FCC Rcd 8634 (1989).

²¹47 U.S.C. 201(b)

sought to achieve four public interest objectives: elimination of unreasonable discrimination and undue preference among rates for interstate services; promotion of efficient use of the local network; prevention of uneconomic bypass; and promotion of universal service.

In crafting the original access charge plan, the Commission was able to strike a delicate balance among each of its objectives. This balance depended primarily on an environment characterized by emerging competition in the interexchange market, limited customer requirements and slowly evolving technologies. As noted above, this balance has been upset by a combination of external forces and Commission actions,²² yet the access rules have not changed.

As technological and competitive conditions have evolved, the access framework has proven progressively unresponsive and has become an obstacle to, instead of a facilitator of, the provision of access services. USTA proposes that the following objectives, some old and some new, be used by the Commission. These objectives would allow the Commission's new access rules to meet the challenges of an evolving, competitive access market and will better enable the Commission to continue to satisfy its statutory obligation to protect the public interest.

²²The Commission staff lists several different objectives in its Staff Analysis. Its suggested objectives are to: foster local exchange and interstate competition, encourage economically efficient pricing, encourage service and technological innovation and preserve universal service. Staff Analysis at pp. 29-30.

A. Promote Universal Service

The Commission has demonstrated through its experience with the interexchange marketplace that a pro-competitive policy can be pursued while maintaining universal service goals. However, this was possible due to the explicit recognition of support flows implicit in pre-divestiture rates and by setting the level of End User Common Line (EUCL) charges to recover some of the support requirements without disrupting the positive impetus of economic pricing. Today's interstate access charge plan accepts the presence of universal service related support flows and, as a result, the pattern of relative rates is different from the pattern a pure market outcome would produce.

In a market where access services are subject to increasing competition, there will no longer be any one carrier or group of carriers that can be relied upon to generate funding for universal service while there is increasing pressure for market-driven rates. The current regulatory framework, which relies solely on exchange carriers to fund certain aspects of universal service support, is not consistent with the development of competition. The funding for interstate support mechanisms to ensure universal service should come from all market participants in a way that eliminates market distortions.

B. Promote Introduction of New Services and Technologies

As noted above, Congress has recognized the importance of encouraging the introduction of new technologies and new services.²³ The existing access framework

²³47 U.S.C. 157(a).

does not further this objective; in fact, it actually impedes it. Many new services do not readily fit the existing rate structure, and the process for obtaining a waiver or changing the rules is costly, time consuming and highly uncertain. As a result, these new services reach the public slowly, if at all.²⁴ Even in the absence of access competition, this failure merits change.

Any new plan should minimize regulatory impediments and should facilitate reliance on market incentives to develop new offerings. The opportunity for innovation should be actively pursued, rather than treated as a regulatory nuisance. The Commission's policies should encourage all access providers, including exchange carriers, to:

- Introduce new services to satisfy customers' needs;
- Adjust service features, terms, and prices in response to customers' needs;
- Tailor solutions to the needs of individual customers; and,
- Make efficient use of the most advanced technology.

C. Support Balanced Competition in Access Markets

The Commission has repeatedly found that open entry, with its resultant competition, produces numerous public interest benefits, including improved service quality and availability, lower prices, and increased innovation in telecommunications

²⁴See, Attachments 1 and 2.

offerings.²⁵ The full range of consumer benefits resulting from a competitive policy can only be realized if all market participants, including the incumbent firm, are allowed to compete effectively. The Commission staff found that if only "LECs are subject to rigid rate structure rules, they will be at a competitive disadvantage in their ability to respond to the market. LEC customers may choose to take service from a competitor in order to avoid artificially high LEC rates or to obtain alternative rate structure options. Loss of customers for these uneconomic reasons has undesirable effects on access rates. As customers leave, the fixed costs of the network must be borne by fewer customers. Access rates would therefore increase for those customers that remained on the network, further reducing the LECs' ability to compete effectively."²⁶

Handicapping the incumbent provider in the access environment is not necessary to ensure that new entrants have the opportunity to operate on an efficient scale. The perception that all alternative competitive suppliers are fledgling entities is erroneous.²⁷ These "new entrants" include well-established interexchange carriers (e.g. AT&T, MCI, and Sprint), as well as subsidiaries of independent corporations of substantial means (e.g. Teleport, Metropolitan Fiber Systems, Electric Lightwave and Comcast). The Commission staff observes that competitive access providers have formed strategic partnerships with,

²⁵Staff Analysis at p. 29.

²⁶Id. at pp. 35-35.

²⁷See, comments of Cincinnati Bell filed September 20, 1991 in CC Docket No. 91-141 at pp. 9-10.

and attracted major investments from, cable television companies, electric utilities, large construction firms and other entities with extensive financial resources.²⁸

Under current Commission policies, competition is anything but balanced. Exchange carrier competitors are able to establish ICB prices for services, including term and volume discounts, without any cost support material, without any constraints on rate structure or rate levels and without any restrictions on establishing new rate elements. They are subject only to the range of prices listed in their tariffs, a practice that is being challenged as contrary to the Act.²⁹ The only way to achieve balanced competition is to treat all competitors equally in a marketplace where competition exists.

D. Promote Efficient Use of the Network

Efficient use of the network is one of the original access charge objectives, and it remains a valid objective for the future. When regulation leads to prices which are different from those a competitive market would naturally produce, decisions are distorted and resources are used inefficiently. Over time, while several aspects of the Commission's access charge plan, such as the introduction of EUCL charges, have reduced some price distortions and contributed to network efficiency, the current access framework now sends increasingly incorrect price signals because it has not kept up with market change. Thus, it does not support the network efficiency objective. Continued

²⁸Staff Analysis at p. 18.

²⁹Bell Atlantic v. FCC, appeal docketed No. 93-___ (D.C. Cir. September __, 1993).

use of economic pricing principles is important if network efficiency is to be fostered. This objective can be met in a new access framework that promotes market responsiveness by exchange carriers.

Network and economic efficiency can be furthered by reducing the effect of uneconomic policies on rates, providing a framework which permits more timely market responses and funding support flows necessary to support universal service through a broad-based contribution mechanism relying on all market participants.

E. Encourage Continued Development of an Advanced National Telecommunications Infrastructure

The development of new technologies, products, and services in a competitive market serves to satisfy the needs of customers in that market more effectively. In the case of an industry like telecommunications, which provides a vital infrastructure base for other industries, there may be additional public policy goals to be served, such as supporting productivity gains in other sectors of the economy that rely on telecommunications, and improving the competitiveness of the United States in world markets.³⁰

³⁰See, U.S. Department of Commerce, National Telecommunications and Information Administration, The NTIA Infrastructure Report: Telecommunications in the Age of Information, NTIA Special Publication 91-26 (October 1991). ("Our fundamental objectives are to identify equitable policies that will assure users of a diversity of services and sufficient providers to meet their communications needs, through competition where possible. We believe that achievement of these goals requires efficient deployment of advanced local public switched networks-the telecommunications facilities upon which most users, and especially residential users, rely-as well as other portions of the telecommunications infrastructure. We are also convinced that policies promoting efficient infrastructure development will permit entrepreneurs and users to expand the U.S. telecommunications system to meet consumer needs.") at p. 19.

A framework that encourages the timely deployment of new technology would support this objective more effectively than the current access structure, which inhibits the introduction of new services. A plan which reduces relative rate distortions would also help to direct all carriers' resources into the most productive investments in telecommunications infrastructure.

F. Prevent Unreasonable Discrimination

The original access charge rules did replace the various mechanisms by which exchange carriers were compensated for the use of their facilities to originate and terminate interstate and foreign traffic. Thus, the original rules provided a single, nondiscriminatory means for exchange carriers to receive compensation. USTA's proposal adheres to this concept.

However, the Commission must continue to permit price differentiation so long as such prices are not unreasonably discriminatory under the Act. Currently, customers in different states can pay different rates for "like" services. In a single state, customers of a single exchange carrier pay the same rates for "like" services even though the services may have different underlying costs. Price differentiation is required in competitive markets.